

Order of Dismissal

1 persona. Petitioner filed state habeas petitions, the last of which was summarily denied
 2 by the California Supreme Court on March 10, 2010. Petitioner filed the instant petition
 3 on March 24, 2010.

4 5 **DISCUSSION**

6 **A. Standard of Review**

7 This Court may entertain a petition for writ of habeas corpus “in behalf of a person
 8 in custody pursuant to the judgment of a state court only on the ground that he is in
 9 custody in violation of the Constitution or laws or treaties of the United States.” 28
 10 U.S.C. § 2254(a); Rose v. Hodges, 423 U.S. 19, 21 (1975).

11 A district court shall “award the writ or issue an order directing the respondent to
 12 show cause why the writ should not be granted, unless it appears from the application that
 13 the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

14 **B. State Proceedings**

15 If petitioner is not currently confined pursuant to a final decision, or “judgment,”
 16 of the superior court, his petition must be construed as arising under 28 U.S.C.
 17 § 2241(c)(3), which provides habeas jurisdiction over any person held in custody in
 18 violation of the Constitution or laws or treaties of the United States, rather than § 2254,
 19 which applies to persons held pursuant to a state court judgment. Although § 2241(c)(3)
 20 does not require exhaustion of state judicial remedies, principles of federalism and comity
 21 require that this court abstain and not entertain a pre-sentence habeas challenge unless the
 22 petitioner shows that: (1) he has exhausted available state judicial remedies, and (2)
 23 “special circumstances” warrant federal intervention. See Younger v. Harris, 401 U.S.
 24 37, 43-54 (1971); Carden, 626 F.2d at 83-84, 83 n.4; Drury v. Cox, 457 F.2d 764, 764-65
 25 (9th Cir. 1972) (“Our reading of Younger v. Harris convinces us that only in the most
 26 unusual circumstances is a defendant entitled to have federal interposition by way of
 27 injunction or habeas corpus until after the jury comes in, judgment has been appealed
 28 from and the case concluded in state courts. Apparent finality of one issue is not

1 enough.”) (citation omitted).

2 Only in cases of proven harassment or prosecutions undertaken by state officials in
3 bad faith without hope of obtaining a valid conviction, and perhaps in other extraordinary
4 circumstances where irreparable injury can be shown, is preconviction federal
5 intervention against pending state prosecutions appropriate.¹ Carden, 626 F.2d at 84
6 (citing Perez v. Ledesma, 401 U.S. 82, 85 (1971)). The Court is not convinced that
7 Petitioner’s warrants such federal intervention.

8 Accordingly, because the Court must abstain from ruling on the petition until the
9 petitioner’s state proceedings are completed, the instant petition will be DISMISSED
10 without prejudice. See Carden, 626 F.2d at 84. Petitioner’s motion for a stay of state
11 court proceedings pending ruling on the instant petition for habeas corpus is DENIED.
12 (Docket No. 9.)

13 This order terminates Docket No. 9.

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15 DATED: 8/12/10

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17 JEREMY FOGEL
18 United States District Judge
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28 ¹ Unlike the Double Jeopardy Clause, the Speedy Trial Clause, when raised as an
affirmative defense, does not embody a right which is necessarily forfeited by delaying
review until after trial. Carden, 626 F.2d at 84.

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

NERRAH BROWN,

Petitioner,

v.

GREGORY J AHERN,

Respondent.

Case Number: CV10-01222 JF

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 8/17/10, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Nerrah Brown ART278
North County Jail-Alameda Cty
550 Sixth St
Oakland, CA 94607

Dated: 8/17/10

Richard W. Wieking, Clerk